at about $30 a month, I consider $140 a month would be a reasonable estimate of the value of loss of support for the purpose of this case.

The deceased was a healthy man so that the probable duration of his profitable working life would be another twenty years. His widow is about the same age as the deceased. She may remarry although I am inclined to think that the chances of her finding a husband who will also agree to look after her children by the deceased husband are likely to be remote. Taking into consideration the usual factors in this type of case including the normal expectation of an active working life for a man of 34, the hazards and vicissitudes of life, the accelerated payment of compensation in a lump sum and allowing a suitable reduction for the above factors, I would assess general damages under section 7 of the Civil Law Ordinance in the sum of $15,750. I do not think any deduction should be made for the deceased's quarter share in the house in which his family have stayed over the years and are still living. That would appear to be the correct view to take in view of the decision in the case of *Heatley and Another* v. *Steel Co. of Wales Ltd.*[1].

The sum of $15,750 by way of general damages will be apportioned as follows:—

To the widow, Liew Mooi	$6,750
To the first child, Chen Nyit Yeo (daughter)	1,000
To the second child, Chen Nyit Lin (son)	1,500
To the third child, Chen Yuet Choong (son)	2,500
To the fourth child, Chen Nyuet Leow (daughter)	3,000
To the father, Chen Foong	500
To the mother, Lee Thai	500

The shares of the widow and the parents can be paid out to them but the shares of the infant children shall be paid to the Public Trustee to be held by him until they reach the age of majority.

As regards special damages, the plaintiff's claim is for a sum of $1,500 by way of funeral expenses. It is agreed that the third defendant has already paid a sum of $1,000 to the plaintiffs towards funeral expenses and that he does not wish to claim back any part of it. In view of my findings as to his liability to pay damages, I allow $500 by way of special damages in respect of funeral expenses.

There will be judgment for the plaintiffs against the second and third defendants in the sum of $16,250 and judgment in favour of the first defendant. The second and third defendants will pay the costs of the plaintiffs and of the first defendant as taxed on the higher scale.

Judgment for the plaintiffs against 2nd and 3rd defendants.

Solicitors:—*Murphy & Dunbar; Shearn Delamore & Co.; Allen & Gledhill.*

UNITED MARKETING CO. v. HASHAM KARA

[P.C. (Lord Evershed, Lord Hodson and Donovan L.J.) April 8, 1963]

[Privy Council Appeal No. 11 of 1961]

Privy Council—Practice—Fresh point—Fact and Law —When entertained.

The Privy Council will not allow a point not taken in a lower court to be argued unless satisfied that the evidence on which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would support the new plea. Even if the facts are beyond dispute they would not readily allow a fresh point of law to be argued without the benefit of the judgments of the judges in the court below.

Cases referred to:—

(1) *Connecticut Fire Insurance Co.* v. *Kavanagh* [1892] A.C. 473, 480; 8 T.L.R. 752, P.C.

(2) *Archambault* v. *Archambault* [1902] A.C. 575, P.C.

(3) *Lewis Ltd.* v. *Norwich Union Fire Insurance Co. Ltd.* [1916] S.A.L.R. App. D. 509.

(4) *Sacks* v. *Western Assurance Co.* (1907) 5 Transvaal L.R. (Witwatersrand H.C.) 257.

(5) *North Staffordshire Railway Co.* v. *Edge* [1920] A.C. 254, 263; 36 T.L.R. 115, H.L.

PRIVY COUNCIL APPEAL from the Court of Appeal for Eastern Africa.

In this case the respondent claimed damages from the appellants on the ground that they were under a contractual obligation to renew, his policy of insurance with the Jubilee Insurance Co. covering his stock-in-trade which was substantially lost when the shop of which he was lessee was destroyed by fire in April 1956. Both the trial court and the Court of Appeal for Eastern Africa found in his favour. On appeal to the Privy Council the appellants sought to raise the additional ground of appeal that even if they were wrong as to the agreement, damages could not be more than nominal since the respondent was in breach of a condition of the policy of insurance that he would "keep a complete set of books of account and stock sheets or stock books, showing a true and accurate record of all business transactions and stock in hand, and such books shall be locked in a fire-proof safe, or removed to another building at night, and all times when the premises are not actually open for business."

F. P. Neill for the appellants.

J. G. Le Quesne Q.C. for the respondent.

The judgment of their Lordships was delivered by,

Lord Hodson (after saying that their Lordships were of the opinion that the appellants had failed to show that there were any documents which could be said to show that there had been such a substantial miscarriage of justice that the concurrent findings of fact ought to be reversed, continued:) The second ground of appeal depending on the allegation that the respondent was in breach of a condition of his policy, is said to be established by his own evidence that he kept stock books, that the stock books relating to the goods destroyed by fire were left on the shelf in the shop which caught fire—that the books were burned and that usually they took their books to their homes at night and put them in the safe, but on this night they were left in the shop.

Their Lordships are of opinion that the appellants should not be allowed to take this point at this stage. In the first place, the point could have been met by evidence that if the claim had been made against the company under a subsisting policy the company would not rely on the breach of the condition or possibly by some other evidence. Their Lordships would not depart from their practice of refusing to allow a point not taken before to be argued unless satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea: *Connecticut Fire Insurance Co.* v. *Kavanagh*[1] and *Archambault* v. *Archambault*[2].

Even if the facts were beyond dispute and no further investigation of fact were required, their Lordships would not readily allow a fresh point of law to be argued without the benefit of the judgments of the judges in the court below. In this case the appellants have relied in support of their submission that there was a breach of condition on two South African cases, *Lewis Ltd.* v. *Norwich Union Fire Insurance Co. Ltd.*[3] and *Sacks* v. *Western Assurance Co.*,[4] which on similar facts support their submission, but their Lordships are not prepared to say that the point is too plain for argument to be required upon it. The arguments and judgments in these two cases indicate that at any rate in the United States of America there are conflicting decisions on this topic, and no direct authority in this country was available so far as the researches of the appellants were able to show. Accordingly, their Lordships would not, even if the question were a bare question of law, entertain the submission that the respondent's claim is to be defeated by reason of his breach of a condition of his contract of insurance with the Jubilee Co., and they would follow the guidance given by Lord Birkenhead L.C. in *North Staffordshire Railway Co.* v. *Edge*,[5] when he said:

> "The efficiency and the authority of a Court of Appeal, and especially of a final Court of Appeal, are increased and strengthened by the opinions of learned judges who have considered these matters below. To acquiesce in such an attempt as the appellants have made in his case is in effect to undertake decisions which may be of the highest importance without having received any assistance at all from the judges in the courts below."

The Lord Chancellor went on to say that there might be very exceptional cases where new matters might be considered, but their Lordships do not regard this case as requiring such exceptional treatment.

Accordingly, their Lordships will humbly advise Her Majesty that this appeal be dismissed, subject to a variation in the amount of damages which by an oversight have been wrongly assessed.

Appeal dismissed.

Solicitors:—*Goodman, Derrick & Co.; T. L. Wilson & Co.*

CHUA KIM LIANG & ANOR. v. TEO KIM NGO

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 18, 1963]

[Seremban — F.M. Civil Appeal No. 2 of 1963]

Damages—Personal injuries—Assessment of damages—Loss of sexual function—Test for intervention of appellate Court.

The fixation of general damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected. A finding of the trial Judge will only be substituted on appeal if the appellate court is satisfied that the Judge has acted on a wrong principle of law, or has misapprehended the facts, or has, for those or other reasons, made a wholly erroneous estimate of the damage suffered.

Case referred to:—

Scott v. *Musial* [1959] 2 Q.B. 429 at p. 437.

COURT OF APPEAL.

V. C. George for the appellants.

M. Sankar for the respondent.

Thomson C.J. (delivering oral judgment): The plaintiff in this case suffered personal injury as a result of a road accident which was caused by the negligent driving of a motor-car by the second defendant in the employment of the first defendant. Liability was admitted at the trial which took place on 19th May, 1959, and to-day, 18th April 1963, that is a month short of four years later, the unfortunate man is finally going to learn what compensation he is going to obtain.

The only question we have to consider here is that of the quantum of damages. In that connection Mr. Justice Ismail Khan awarded